

the position that a printed publication can serve as a statutory bar under 35 U.S.C. 102(b) if the reference, combined with knowledge in the prior art, would enable one of ordinary skill in the art to reproduce the claimed plant. A publication however does not have an enabling disclosure as one skilled in the art could not reproduce the plant from the information found in the publications, namely application and registration dates, numbers, and denomination, whether or not the plants were made publicly available. Furthermore, the variety was not made available in the U.S. more than one year prior to the U.S. filing date of March 9, 2000.

Requirement for Information Under 37 CFR 1.105

With respect to the requirement for information under 37 CFR 1.105 regarding sale or other public distribution of the claimed plant variety anywhere in the world, public use and availability of the plant variety *outside* of the United States, is not material to a determination of plant patentability of a plant variety in the United States. 35 U.S.C. 102, which formed the basis for the Examiner's rejection, states

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in *this* [emphasis added] country, more than one year prior to the date of application for patent in the United States.

Applicant respectfully traverses the rejection. Applicant asserts that the cited Plant Breeder's Rights certificate is not a bar to patentability of the claimed variety under 35 U.S.C. §102(b) because the publications (application, denomination, and certificate) were not enabling to one skilled in the art and the variety was not made available in the U.S. more than one year prior to filing in the U.S.

35 U.S.C. §112 (first and second paragraphs)

Applicant in good faith is unable at this time to provide further information with regard to questions A through Q. Applicant is attempting to obtain the botanical data requested and will provide them in a subsequent amendment.

Declaration

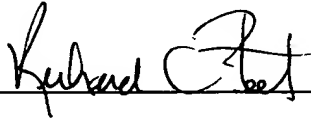
Subsequent to the filing of this response, Applicant will submit a substitute declaration which states that the Applicant has asexually reproduced the instant plant.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should an improper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Respectfully submitted,

Date March 19, 2003

By 

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